

BANTAY KITA-PYWP PHILIPPINES

UNDERMINING THE MYTHS ABOUT **SMALL-SCALE MINING**



ABOUT THE AUTHORS

Dr. Boris Verbrugge has recently (May 2015) obtained his PhD from Ghent University, Belgium. He is currently a post-doctoral researcher and lecturer at Radboud University, Netherlands. His research deals with small-scale gold mining in the Philippines, particularly in eastern Mindanao. In total, he spent 10 months of field research in the Philippines, including in Compostela Valley province, Benguet, Agusan del Norte, South Cotabato, and North Cotabato. Throughout this research, Boris has interviewed over 175 people, including small-scale miners, government officials, local politicians, local landowners, mining financiers, NGO-workers, and academics. Throughout, he was assisted by different NGOs, research institutes (including AFRIM, the Alternate Forum for Research in Mindanao), and Bantay Kita.

Ms. Beverly “Bon” Besmanos is taking her Masters Degree in Anthropology at the Ateneo de Davao University, Philippines. She works with Bantay Kita-Publish What You Pay-Philippines as Subnational Coordinator for Mindanao. Bon was formerly employed by the Alternate Forum for Research in Mindanao. Her vast work experience with communities, local and national governments, and industry has given her an exceptional understanding of mine-related regulations, policies, and programs, and the challenges of implementation on the ground. Ms. Besmanos has conducted research for several mining-related studies, including this one.

UNDERMINING THE MYTHS ABOUT SMALL-SCALE MINING

Along with many other countries, in recent decades the Philippines –have witnessed a dramatic expansion of small-scale mining (SSM), mostly (but not exclusively) in the form of small-scale gold mining. As can be seen in the graph below (figure 1), official gold production from SSM has repeatedly surpassed that of large-scale metallic mining. While SSM is taking place throughout the country, its presence is particularly dramatic in the Cordillera mountain range in Luzon and in the uplands of eastern Mindanao, with Compostela Valley province acting as the self-proclaimed ‘gold mining capital of the Philippines’. Despite this massive expansion, however, SSM continues to be shrouded in controversy and misunderstanding. This short piece offers a view from below, based on long-term research inside the country’s mining areas, and attempts to undermine some of the myths that exist about the sector.

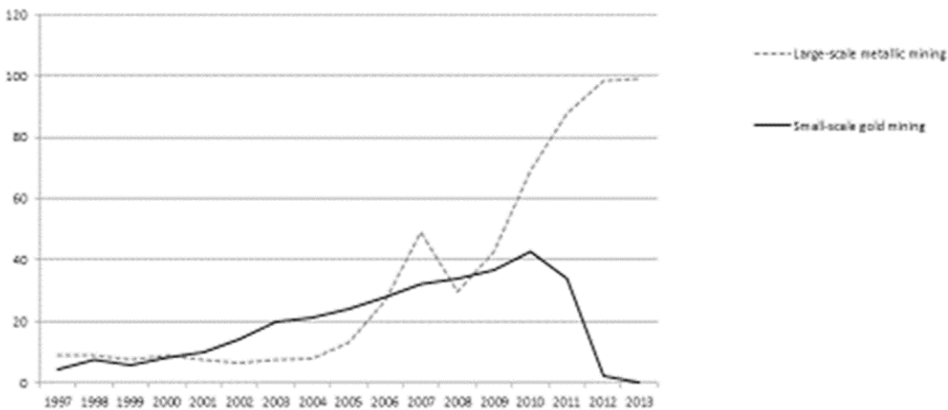


Figure 1: Output figures for small-scale gold mining and large-scale metallic mining¹

1 Official figures obtained from www.mgb.gov.ph

ASM-Expansion: Not (merely) a question of poverty or opportunism²

The first set of myths surrounding SSM relates to the factors that have led to its massive expansion. All too often, the sector continues to be seen as composed of opportunist fortune seekers that are looking to ‘get rich quick’. One illustration of this perspective in the Philippines are the rags-to-riches stories about the infamous Diwalwal gold rush. However, an international consensus is now emerging about SSM being a poverty-driven response to economic crisis³. However, in isolation neither one of these perspectives can account for the dramatic expansion of SSM in the Philippines.

To be sure, poverty and subsistence crisis play a central role in the expansion of SSM. For example, when gold panning first emerged in Mindanao in the post-war decades, it was practiced by poor upland settlers who were looking for ways to diversify their income in the face of demographic growth and a crisis in agriculture. However, as the country plunged into political and economic crisis in the 1980s, more and more people found their way to the gold mining areas. Importantly, as the large-scale mining sector experienced a major downturn in the 1980s-1990s, many of the skilled miners also joined the gold mining frenzy. Together with a much more diverse group of poor and unemployed, it was this group of ‘pioneer miners’ that kick-started SSM-activities throughout Mindanao.

However, poverty and crisis are only part of the explanation. As miners penetrated deeper inside the mountains, the risk for flooding or even tunnel collapse increased. At least some of these limitations would be overcome through the involvement of outside financiers, who provided the capital necessary for a gradual mechanization and professionalization of SSM. This process was particularly apparent in the Diwalwal gold rush area in Monkayo municipality, Compostela Valley. Here, SSM-activities like those found elsewhere evolved into immense tunnel complexes with a high degree of mechanization (see figure 2). These ‘medium-scale’ mining operations –as the financiers themselves often refer to them–have a complex division of labor, providing employment opportunities not only

2 For further reading see Verbrugge, B. (2014). Capital interests: A historical analysis of the transformation of small-scale gold mining in Compostela Valley province, Southern Philippines. *The Extractive Industries and Society*, 1(1), 86-95.

3 See Hilson, G. (2010). “Once a miner, always a miner”: Poverty and livelihood diversification in Akwatia, Ghana. *Journal of Rural Studies*, 26(3), 296–307.

for diggers (*abanteros*) and haulers (*atraseros*), but also for ‘specialists’ like carpenters, electricians, portal guards, ... (see figure 3). Processing of gold ores as well has evolved, from rudimentary hand milling, to mechanized ball milling, to carbon-in-pulp processing (see figure 4).



Figure 2: A tunnel portal in the Diwalwal gold rush area in Monkayo, Compostela Valley
Photo courtesy of Adrian Daniel

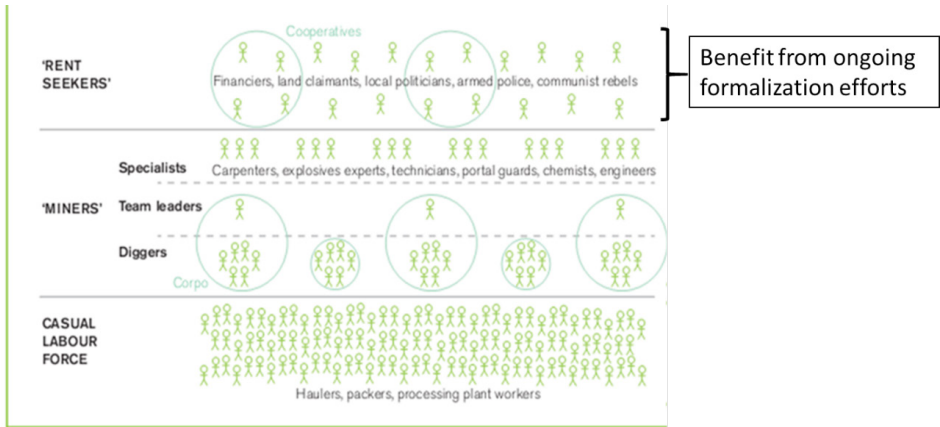


Figure 3: The organization of SSM⁴

4 Adapted from Verbrugge, B., Besmanos, B., & Buxton, A. (2014). Artisanal and small-scale mining: protecting those doing the dirty work. International Institute for Environment and Development (IIED-2014). See <http://pubs.iied.org/pdfs/17262IIED.pdf>



Figure 4: A Carbon-In-Pulp (CIP) *planta* somewhere in Compostela Valley

Photo courtesy of Adrian Daniel

In short, while poverty and economic crisis guarantee an unremitting supply of new labor recruits, the transformation from rudimentary SSM to fairly advanced tunneling operations can only be explained by paying attention to the role of outside financiers, whose involvement is driven by a desire to accumulate capital. Particularly in recent years, skyrocketing gold prices have provided further incentives for outside investors, and have led to an increased incidence of medium-scale mining practices like those previously found only in Diwalwal. In fact, many SSM-activities in the Philippines now no longer conform to the legal definition of small-scale mining as *‘artisanal with heavy reliance on manual labor and without the use of explosives and/or blasting accessories (...) prohibited from using sophisticated and/or heavy equipment, i.e. excavators, loaders, backhoes, dozers, drilling machines and/or related or similar equipment for the extraction and/or breakage of materials’*⁵. This brings us to a second set of misunderstandings, namely those related to the sector’s acclaimed ‘illegality’.

5 DENR Memorandum Circular No. 2007-07: Clarificatory guidelines in the implementation of the small-scale mining laws, <http://mgb.gov.ph/Files/Policies/dmc-2007-07.pdf>

‘Illegal’ mining?

In response to the dramatic expansion of SSM, the national government has created an entire range of laws, regulations and administrative orders to expand its control over the sector.⁶ In 1984 president Marcos promulgated Presidential Decree 1899 (PD 1899), authorizing the Bureau of Mines and Geosciences to award permits to SSM-operators –although in reality the local executive retained a high degree of control over the issuance of these permits. In 1991, as part of a broader decentralization effort, Republic Act 7076 (RA7076) devolved authority over SSM to Provincial/City Mining Regulatory Boards (P/CMRBs) that became authorized to segregate people’s small scale mining areas (Minahang Bayan), and to award renewable 2-year small-scale mining contracts to SSM-operators inside these areas, provided that they organize themselves into a cooperative.

Despite this elaborate regulatory structure, most SSM continues to take place without government recognition, with some estimates suggesting that over 80 % of SSM-activities now operate without a permit⁷. All too often, this lack of permits is treated as a question of ‘illegal’ or even ‘criminal’ miners that deliberately seek to evade taxation and regulation. At the same time government agencies responsible for monitoring SSM (mainly the department of natural resources), are under-resourced and under-capacitated, providing them with the opportunity to do so. However, while it might well be true that SSM-operators have incentives to evade government supervision, most respondents indicated a strong desire to obtain an official permit. However, several factors prevented them from doing so. The most important ones:

- SSM-operators need to comply with a long list of fiscal and administrative requirements before they even qualify for a permit, including obtaining entire range of certificates, permits and clearances from different government levels and -agencies. Obviously, these requirements also carry significant costs in the form of (amongst others) permit- and clearance fees, often inflated by ‘under the table’ contributions and ‘standard operating procedures’. As a result, permits are only accessible for those with political connections and adequate

6 All relevant laws and regulations can be consulted on the website of the Mines and Geosciences Bureau: www.mgb.gov.ph.

7 <http://www.manilatimes.net/index.php/business/top-business-news/14680-80-of-small-mining-operations-illegal>

financial resources –paradoxically often those operators that no longer conform to legal definitions of SSM.

- SSM-operators cannot be legalized without the explicit consent of surface land claimants. In some areas, tribal associations holding ancestral domain rights under the 1997 Indigenous Peoples Rights Act refuse to provide them with said consent. Inside protected areas, meanwhile, all mining is strictly prohibited by law. Arguably most problematic for SSM-operators, however, is the expansion of large-scale mining. In line with the situation in other countries, the national government (through the Mines and Geosciences Bureau) has awarded increasingly large tracts of mineral-bearing land to large-scale mining companies⁸, who refuse to provide legal consent to ASM-operators active inside their concession. In different areas in Mindanao, this situation is already giving rise to tensions and conflicts on the ground.
- Finally, even in rare cases where an ASM-cooperative is issued with a permit, the list of cooperative members / permittees is often limited to a dominant group of landowners and financiers. Meanwhile the workforce, and the complex labor arrangements in which it is involved, remain outside the scope of existing regulatory frameworks (see figure 6 below). This situation means that the workforce is highly vulnerable for dangerous and exploitative working practices.

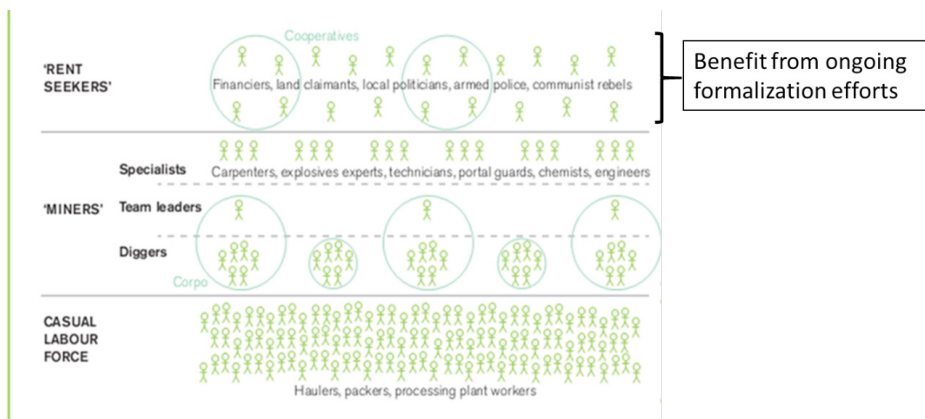


Figure 6: The limited scope of ongoing formalization efforts, which fail to protect the informal workforce⁹.

⁸ Hilson, 2013.

⁹ Adapted from Verbrugge, B., Besmanos, B., & Buxton, A. (2014). Artisanal and small-scale mining: protecting those doing the dirty work. International Institute for Environment and Development (IIED-2014). See <http://pubs.iied.org/pdfs/17262IIED.pdf>

Not (merely) a question of anarchy and disorder

‘Illegal mining’ is often associated with wild-west like images of frontier lawlessness, as exemplified by the references to the infamous Diwalwal gold rush area as the ‘wild wild west of the Philippines’ (see figure 7). This regulatory disorder is in turn associated with social and environmental woes like child labor, prostitution, mercury pollution and environmental degradation¹⁰. In addition, SSM is seen as a major source of ‘revolutionary taxes’ for the communist New People’s Army, thus sustaining the Maoist insurgency against the government¹¹.



Figure 7: The Diwalwal gold rush area in Monkayo, Compostela Valley: the ‘wild wild west’ of the Philippines?

While there may well be some truth in these claims –there is no denying that SSM has a dramatic impact on the environment–these images of lawlessness and chaos are not necessarily in line with realities on the ground, where SSM-operators often developed mechanisms to deal with risk and uncertainty. Examples include the entire range of unwritten rules to settle conflicts between tunnel operators and/or between landowners; but also agreements between SSM-operators and local landowners, who provide access to their land in exchange for a royalty share (often 10 per cent).

10 <http://www.rappler.com/nation/698-small-scale-mining-a-3-decade-industry-that-kills>

11 <http://www.rappler.com/thought-leaders/62988-npa-mining>

More importantly, in mining areas throughout the Philippines we encountered local government officials that now play an active role in the regulation of SSM. In Benguet province, local government officials were involved in a tripartite agreement with a large-scale mining company (Benguet Corp.) and SSM; maintaining peace and order and implementing existing laws and regulations. In 2011, the provincial government of South Cotabato initiated the *Minahang Bayanihan*, a program aimed at recognizing the mining claims of individual SSM-operators, but also at regulating labor relations¹². In Compostela Valley, while barangay officials are administratively sanctioning agreements between SSM-operators and local landowners, the province is assisting SSM-operators to organize themselves into cooperatives, while collecting a range of taxes at various checkpoints throughout the province.

Two things are particularly important here. First, while local politicians may well be motivated by particularistic economic and political interests, these different regulatory interventions do create at least some degree of predictability in the SSM-sector. Secondly, while the national government continues to brand the SSM-activities in question as illegal, many of these regulatory interventions have a legal basis in the local government code. In this sense, the proactive stance taken by local government officials can be seen as both a product of decentralization, but also as a clear illustration of the inconsistencies in the broader legal system. More precisely, while the national government relies on the 1995 Mining Act to promote the expansion of large-scale mining, the local government code allows local politicians to defend the interests of SSM-operators.

12 Verbrugge, B., Besmanos, B., & Buxton, A. (2014). Artisanal and small-scale mining: protecting those doing the dirty work. *International Institute for Environment and Development* (IIED-2014). See <http://pubs.iied.org/pdfs/17262IIED.pdf>

CONCLUSION

We have attempted to critically evaluate some of the pervasive myths that exist about the SSM-sector, which now arguably employs hundreds of thousands of people throughout the country. We have put forward three key propositions. The first one is that the dramatic expansion of SSM in recent decades should be understood as the product of a complex interplay between poverty and subsistence crisis on the one hand, and on the other hand a desire to accumulate on the part of outside financiers. Secondly, that a lack of government regulation is not (simply) the result of deliberate attempts on the part of SSM-operators to evade government regulation. Rather, it is also a matter of SSM-operators and a workforce that are excluded from legal recognition. Thirdly and finally, that the lack of government regulation does not imply a complete lack of regulation as such. Instead, on the ground we find a variety of unofficial regulatory practices, which sometimes involve –and are indeed centered around– local politicians.

It is high time for policymakers to recognize and adjust to these realities on the ground. For one, there is an urgent need to adjust simplistic legal definitions of SSM, in order to accommodate those activities that have long transcended the level of artisanal, low-tech mining. Secondly, there is a need to ‘democratize’ regulatory frameworks, making sure that all SSM-operators –including the workforce– can have access to legal protection, instead of only the fortunate few. Finally, policy would benefit from a better understanding of- and an engagement with regulatory realities on the ground, where local politicians as well as the miners themselves are undertaking efforts to establish a degree of regulatory predictability.



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